KO RUBBER PLANTATIONS PTE. LTD.

v.

PEMUNGUT HASIL TANAH, BATU PAHAT

HIGH COURT MALAYA, MUAR
RICHARD TALALLA JC
[LAND REFERENCE NO. 15-10-84]
5 MAY 1990

LAND LAW: *Acquisition - Compensation - Dispute - Principles to be followed - Similarities and dissimilarities - Land Acquisition Act 1960.*

The applicant K was the owner of property X; part of the estate was Lot A. On 13 September 1979 an area (the acquired land) of Lot A was acquired under the Land Acquisition Act 1960 for construction of a road from the main road to village PB. This acquired land was a strip cutting across the breadth of Lot A and effectively divided Lot A into two.

At the date of acquisition this acquired land was being used by R and members of the public used their road without objection from K.

The dispute in this case was as to the compensation awarded by the respondent, which K claims was below market value as at the date of acquisition.

Both parties submitted detailed written submissions which included compensation with previous awards of sales of land in the neighbouring area and said area.

Held:

[1] The law relating to the award and amount of compensation to be awarded in respect of land acquired under the Act is set out in the Supreme Court's decision in *Bertam's* case which applied *Ng Tion Hong's* case.

[2] An acquisition award previously awarded was relevant in determining the market value but adjustments had to be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land.

[3] On the facts of this case, an assessment of the value of the acquired land by reference to percentages is unrealistic as there are too many variables in the comparable lands; in addition this acquired land had no development potential and was only fit for use as a road apart from cultivation.

[4] After careful consideration of all the factors and the assistance of the highly experienced assessors the former Deputy Commissioner of Land and the retired settlement officer, a prospective buyer who is ready, willing and able and who has surveyed the market at the time of acquisition would have paid RM12,000 per acre for the acquired land.

[Order accordingly.]

Cases referred to:

Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co. Ltd. [1990] 1 CLJ (Rep) 229

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ (Rep) 289

Bertam Consolidated Rubber Co. Limited v. Collector of Land Revenue Province Wellesley North Butterworth [1984] 1 CLJ (Rep) 78

For the applicant - Lee Buck Heng; M/s. Abdullah A. Rahman & Co.
For the respondent - Abdul Rahim bin Uda (Assistant State Legal Adviser, Johor)

JUDGMENT

Richard Talalla JC:

The applicant was at all material times the owner of a landed property known as Sri Gading Estate having an area of more than 8,577 acres. Part of the estate was Lot 5359 comprising 83.8930 acres. It was quadrilateral and roughly oblong in shape. It was situated north of the main road running between Batu Pahat and Air Hitam. Its longest side abutted this main road and ran from before the 70¼ mile post to beyond the 71 mile post.

Pursuant to the provisions of the Land Acquisition Act 1960 an area of 1.8125 acres being part of Lot 5359 was acquired. That part will hereafter be referred to as the acquired land.

The acquired land is situated at 70 3/4 mile stone of the main road and was acquired for the purpose of constructing a road from the 70 3/4 mile stone main road to a village called Parit Yaani on the Batu Pahat/Yong Peng road. The material date of the acquisition was 13 September 1979.

The acquired land consisted of a strip running across the breadth of Lot 5359 from its mid length thus effectively dividing Lot 5359 into two. This strip was 105 ft long and 752 ft wide.

At the time of acquisition the acquired land was being used by its owners as a road. It was a laterite road. It was common ground that members of the public used this road without objection from the owners.

The respondent, in securing the acquired land, awarded the applicant compensation at the rate of RM7,000 per acre. The applicant objected to the award stating that the compensation was below the market value of the acquired land as at the date of acquisition namely 13 September 1979 and that the award did not reflect the full development potential of the acquired land by itself. As required by the Act the respondent referred the objection to this Court.

At the hearing of the objection both the applicant and the respondent submitted their written respective valuations, without objection. The applicant's valuer gave evidence and was cross-examined. The respondent's valuer was not called because he was not in the country, he having migrated. At the close of their respective cases, by consent, applicant's Counsel put in a written submission to which respondent's Counsel answered likewise whereafter Counsel for the applicant submitted a written reply to the answer. These three submissions contained the detailed argument advanced by both Counsels on behalf of their respective clients.

In seeking to establish the applicant's case for increased compensation Counsel compared the present award with a number of sales of lots of land in the surrounding areas, in the area of the acquired land and indeed the same lot as the acquired land. Counsel for the respondent did likewise.

Due consideration was given to this case as a whole, the evidence given by the applicant's valuer and the submissions of Counsel.

The principles relating to the determination of compensation are contained in the first schedule to the Act. The law relating to the award and amount of compensation to be awarded in respect of land acquired under the Act is set out in the judgment of the Supreme Court in Civil Appeal No. 427 of 1988 *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co. Ltd.* [1990] 1 CLJ (Rep) 229 in which Harun SCJ delivering

the unanimous judgment of the Court dealt with a complaint that the trial Judge had held two sales not comparable to the land acquired. Rejecting the complaint and agreeing with the Judge's finding Harun SCJ referred to the case of *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ (Rep) 289. In that case the Government valuer had relied on evidence of awards made and accepted, sufficiently proximate in point of time to the relevant date for purposes of the then present valuation. In finding such a method of valuation. The Supreme Court Judge referred to the case of *Bertam Consolidated Rubber Co. Limited v. Collector of Land Revenue Province Wellesley North Butterworth* [1984] 1 CLJ (Rep) 78. Accordingly the two cases referred to by the Supreme Court were considered here. In *Ng Tiou Hong's* case Syed Agil Barakbah FJ at p. 291 set out five main principles to be applied along the lines provided by the first schedule to the Act, according to the facts and circumstances of a particular case. Those principles are as follows:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future e.g. the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.

In the *Bertam* case Mohd. Azmi FJ again giving the unanimous judgment of the Federal Court said that in the view of the Court an acquisition award previously awarded and accepted by *Bertam* was relevant in determining the market value, but adjustments had to be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land. The Federal Court held that the learned Judge had done this sufficiently and that he took into account not only the similarity and size but also dissimilarity in location although both lands formed part of Bertam's estate - Kemas the comparable land being virtually in Kepala Batas town whereas the subject land was about two miles away. Further, Kemas was within the draft town plan whereas the subject land was outside it and therefore not zoned for development. For these dissimilarities, the learned Judge made a deduction of 30%, and for the difference in time of acquisition date he added 5% because Kemas was acquired about 9½ months earlier. The increased valuation of RM15,000 was therefore arrived at by deducting 25% from RM20,000, the award made to Kemas on 30 August 1979.

In the present case the applicant relied on two previous acquisitions to establish the objection to the respondent's award. The two acquisitions were the applicant's land held under the same Lot 5359, the one acquired in January 1979 being some 85.75 acres at RM17,000 per acre. The other was two acres two roods 7 poles being part of Lot 5359 acquired for Telecoms in July 1980 at RM28,000 per acre. I will call these the Risda and Telecoms acquisitions respectively.

In answer Counsel for the respondent referred to a number of dissimilarities and to the time factor and the interest content resulting from settlement which was long after the acquisition. Counsel for the respondent also pointed out that both the Risda and the Telecoms acquisitions were the subject of consent orders made by this Court and in that regard he referred to the judgment of Razak J in Ipoh High Court Land Reference No. 7 of 1979 *Consolidated Plantations Bhd. v. The Collector of Land Revenue, Lower Perak (Telok Anson)*. I respectfully agree with the warning of Razak J in the case abovestated and have heeded the same. The fact remains that I am bound by *Ng Tiou Hong's* case and especially the first principle therein. It is significant that the consent orders in respect of the Risda and Telecoms acquisitions were between the same parties that is to say the applicants in this case as owners and the respondent the Pemungut Hasil Tanah. That being the case every facet and detail of the settlement in each of those two cases would have been known to the parties to the agreement. It must follow that any feature in those settlements inapplicable to or not fitting in the present matter would have been pointed out by Counsel. As stated above Counsel for the respondent did so in his answering submission but there was no reply in this regard from Counsel for the applicant. In the end the following factors had to be considered. The Risda acquisition was 85.75 acres whereas the acquired land was 1.8 acres. The rule of thumb is the larger the tract of land the cheaper it is, the smaller the land the more expensive. The Risda land enjoyed road frontage. The acquired land to a great extent did not. The Risda land was in use for profit, it being part of an oil palm estate, part of the applicant's oil palm estate. The acquired land was used as a road and produced no income. The acquired land as a road strip naturally enjoyed a road frontage at the one end but was interior or second layer land at its other end. (However care had to be taken not to give separate valuations to parts of the acquired land.) The Risda and Telecoms acquisitions were more attractive in shape, rectangular and squarish respectively and therefore more suited to development. It was common ground that in the years 1979/80 there was a rising market. The Risda land was acquired in 1979, the acquired land in September that year and the Telecoms land in July 1980.

Both Counsel in support of their respective cases referred to a number of lots as comparables. Most of these lots were in outlying districts. Each such lot enjoyed a separate title. They were small holdings ranging from 1 acre and more to 8 acres and a little more. There were a number of vagaries and variables. The permutations were too diverse to be of practical application to the case at hand.

An exception was Lot 1051 consisting of 4 acres 3 roods 35 poles which was sold in April 1979 at RM12,137 per acre. This lot was situated fronting Jalan Parit Japan and very close to the village of Sri Gading along Parit Sri Gading. The advantages of this Lot 1051 as compared to the subject land were as follows:

1. Easily saleable because it is an agricultural holding of a little less than 2 acres.
2. Situated within the village of Sri Gading (M/P 71 1/4).
3. Has individual land title.
4. Though off the main Batu Pahat-Ayer Hitam road (second-layer land) it has access from metalled road from Parit Japan which joins Jalan Parit Sri Gading to main road.

The advantage of the subject land is:

1. It is on the main Batu Pahat-Ayer Hitam road (M/P 71 3/4) and 1/4-mile nearer to Batu Pahat town than Lot 1051.

The disadvantages of Lot 1051 are:

1. It is not on the main Batu Pahat-Ayer Hitam road.
2. Situated at M/P 71 1/2 it is 1/4-mile further away from Batu Pahat town than the subject land.

The disadvantages of the subject land are:

1. No individual land title as it is a portion of Lot 5359 which is Estate land.
2. Not easily saleable as permission of the Estate Land Board is first to be obtained before sale or fragmentation.
3. Has been used as Estate road and without cultivation.
4. Situated outside the village boundary of Sri Gading.

Counsel for the applicant referred to Lots 1737 and 1738 which were 3rd layer lots. These lots were sold at RM18,600 per acre on 2 September 1979, just 11 days before the acquisition of the acquired land. These lots were rejected by the respondent's valuer as being an overpayment for 3-layer land. The assessors and I agree. The purchaser was a cooperative society. It is true that the judgment of Razak J in Ipoh High Court Land Reference No. 4 of 1975 *Ng Chin Siu & Sons v. Collector of Land Revenue, Hilir Perak*, speaks to Co-operative Sales being no different from normal sales on the open market. The fact remains that the price of these lots far exceeds the price of comparable 3rd layer lots placed in evidence in this case.

I disregard the comparable sales cited by Counsel for the applicant, namely Lot 2910 at RM91,000 per acre in February 1980, Lots 327 and 1378 at RM92,000 per acre in April 1980 and Lot 1425 at RM46,000 per acre in April 1979 as they are of land situated within the Town Council area of Batu Pahat and about 4 miles away from the subject land.

On the potential use of the acquired land, Counsel for the applicant suggested that this 105 ft. x 752 ft. long strip of land could be turned into low-cost housing terraces. This the assessors and I feel from the aesthetics point of view is not suitable for a good housing scheme. The terrace houses would be congested. Building would be better sited parallel to the main road with the acquired land used as access. From the Batu Pahat Town Council boundary (74 1/2 M/P) up to Sri Gading Village (71 1/4 M/P) there is not a single housing scheme. This is because people seem to live on their own agricultural lots. There appears to be no demand for a housing scheme in this area. Counsel for the applicant could not justify his statement that the acquired land has good building potential.

I feel that an assessment of the value of the acquired land by reference to percentages is in the circumstances unrealistic. There are too many variables in the comparable lands. Taking off 10% for this and adding 20% for that makes little sense.

In the end, after careful consideration of all the factors and with the valued assistance of the two assessors, both highly experienced in land matters including values, Dato' Mansor bin Salim being a former Deputy Commissioner of Lands, Johor with more than 20 years

experience in land administration and Tuan Haji Mustapha bin Othman a retired Settlement Officer well experienced in Land Office surveys, the view I come to is that a prospective buyer, ready, willing and able, having prudently surveyed the market at the time of acquisition would have paid for the acquired land at the rate of RM12,000 per acre, bearing in mind all the factors and the saliently peculiar feature namely that the acquired land had no development potential and was only fit for use as a road apart from cultivation.

Also found at [1991] 1 CLJ 179